

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

FILED

March 4, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

JOSEPH WALTON JAMES,)	
)	
Plaintiff/Appellee)	ANDERSON
)	CIRCUIT
)	
v.)	NO. 03S01-9802-CV-00012
)	
THE TRAVELERS INSURANCE)	HON. JAMES B. SCOTT, JR.,
COMPANY,)	JUDGE
)	
Defendant/Appellant)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Chief Justice E. Riley Anderson
Senior Judge John K. Byers
Special Judge Roger E. Thayer

AFFIRMED

BYERS, Senior Judge

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court awarded the plaintiff 55 percent vocational disability to the left leg.

The defendant raises the following issues:

- I. Whether the evidence preponderates against the trial court's determination that plaintiff sustained vocational disability of 55% to the leg, where no medical restrictions were imposed on his activities, he was able to resume and sustain his pre-accident employment, and retained the ability to perform other pre-accident employments.
- II. Whether the evidence preponderates against the trial court's determination that plaintiff sustained vocational disability in the amount of 55% to the leg, where its decision was based on findings of fact that were either improper to consider or not supported by a preponderance of evidence.

We affirm the judgment.

The plaintiff, age 57 at the time of trial, graduated from high school and received vocational training as a hydraulic mechanic while serving in the U.S. Air Force. His employment history includes working as a roustabout, a truck crane oiler, a machine operator, a fork crane operator, and a tractor-trailer truck driver. In March 1975, he went to work for the predecessor of Titan Tire or Dico Tire, where he still works as a spray operator or green tire sprayer.

The plaintiff testified that on May 21, 1996 the sprayer he was using malfunctioned and began spraying paint on the floor. He explained that he continued to work until his feet got twisted around and he fell with his left leg beneath

his body, injuring his knee. The defendant concedes that the plaintiff sustained a compensable work injury.

The plaintiff immediately reported this injury to his supervisor and he was taken to Dr. Cumberledge for treatment. Dr. Cumberledge referred him to Dr. Hovis, an orthopedic surgeon, for further evaluation and treatment. The plaintiff testified that when he returned to work in September 1996, after Dr. Hovis released him with temporary restrictions, he had a "rough" time because he had to do a lot of twisting, lifting, and pulling. He also testified that since his 1996 knee injury he does not have "good stability" and "babies" his left leg. In order to return to full-time, unrestricted duty, the plaintiff underwent and passed a physical examination. Since December 1996, he has performed his regular job duties and has earned at least as much money as he did before the injury.

_____Prior to the injury in this case, the plaintiff's medical history consisted of a car accident which caused him to have balance problems, bilateral carpal tunnel surgery, arthritis in both knees, and a 15-20 year old knee injury for which he once took pain medication on a regular basis. At the time of trial, he was taking an arthritis pill. The plaintiff testified that although he is slower since the injury, he has continued to mow the lawn, trim the hedges, and hunt deer and turkey with a rifle and bow. Finally, he stated that he could perform such previous jobs as crane operator, tractor-trailer truck driver, and builder/sorter of pallets.

_____Thirteen months after the injury in this case, the plaintiff was involved in an accident where his 4-wheeler turned over on top of him, causing an injury to his right hip. The plaintiff testified that his right hip gives him more trouble at work than his left leg does. Mr. Stooksbury, the curing superintendent at Titan/Dico for seven years, testified that he observes and talks to the plaintiff everyday at work. He said that the plaintiff's work speed has not been affected by his knee injury, but that he has complained about his hip on the job.

_____The only medical evidence was given by deposition by Dr. William Hovis, a board certified orthopedic surgeon and the treating physician. Dr. Hovis' initial diagnostic testing revealed that the plaintiff had sustained tears of the medial meniscus, lateral meniscus, and anterior cruciate of the left knee, which he believed were caused by his work accident. He found that the plaintiff's preexisting arthritis in

his left knee was severe and opined that it had been aggravated by his work injury. On June 28, 1996, Dr. Hovis performed arthroscopic surgery to repair the tears in the plaintiff's left knee. He released him to return to work on September 3, 1996 with temporary restrictions of four hours a day for two weeks and increasing to eight hours a day, as well as a temporary weight restriction of 50 pounds. Dr. Hovis determined that he reached maximum medical improvement on December 23, 1996, when he released him to work with no restrictions. The plaintiff returned to him on March 24, 1997 doing well but slow at his job; Dr. Hovis found that his knee was stable at that time. Dr. Hovis opined that the plaintiff sustained a 15 percent (nine percent for repair of the menisci and six percent for aggravation of the preexisting arthritis) permanent partial impairment to his left leg as a result of the May 1996 work accident according to the *AMA Guides*. Dr. Hovis discussed with the plaintiff the possibility of total knee arthroplasty or knee joint replacement in the future.

Regarding the first issue, the defendant says that the preponderance of the evidence does not support the trial court's award of 55 percent permanent partial disability to the left leg because of the following facts: (1) the plaintiff has successfully passed a physical examination and has performed his regular job duties for more than one year since the work injury; (2) Dr. Hovis eventually released the plaintiff to return to work without restrictions; (3) the plaintiff stated that he could perform such previous jobs as crane operator, tractor-trailer truck driver, and builder/sorter of pallets; (4) the plaintiff has continued to do yard work and hunt since the work injury; and (5) the plaintiff did not offer proof establishing that his job opportunities in the open labor market have been diminished by the knee injury.

The plaintiff contends that the preponderance of the evidence supports the trial court's award of 55 percent permanent partial disability to the left leg based on the following facts: (1) he continues to work despite afflictions and never complains, and the trial court found him to be "unexaggerated and refreshingly honest"; (2) he suffered a compensable knee injury at work for Titan/Dico and required surgery and may require a future joint replacement; (3) Dr. Hovis testified that the plaintiff tends to minimize his pain; and (4) Dr. Hovis opined that the plaintiff suffers from a 15 percent permanent partial disability to the left leg based solely on the May 1996 work injury.

We find the evidence does not preponderate against the determination that the plaintiff sustained a 55 percent disability to his left leg as contended by the defendant. The medical evidence is that the plaintiff suffered a 15 percent medical impairment to his knee as a result of this fall. Nine percent of this was based on the actual injury to the leg and six percent was based upon the aggravation of his preexisting condition of arthritis. The defendant is liable for both the injury to the leg as well as for the aggravation of the preexisting condition.

Next, the defendant says that the evidence preponderates against the trial court's determination that plaintiff sustained vocational disability in the amount of 55 percent to the leg because it was based on findings of fact that were either improper to consider or not supported by a preponderance of evidence.

The trial court's memorandum opinion stated,

The plaintiff is not as productive as other employees who perform the same work function and he has problems with his knees as well as his hip and other joints as a result of a degenerative arthritis condition including the left knee. The doctor has given the plaintiff an anatomical disability of 15 percent to the left leg (excluding the arthritic condition) and opines that a knee replacement with an artificial joint is a future consideration.

First, the defendant argues that the evidence does not support the trial court's finding that the plaintiff was less productive than co-workers since his knee injury because he continues to successfully perform his regular job duties and earns at least as much money as he did before the injury, and his superintendent testified that his work speed has not been affected by his knee injury.

Second, the defendant argues that the trial court misconstrued the plaintiff's impairment rating because Dr. Hovis' rating did include six percent for his preexisting arthritis, and that the trial court should not have considered the possibility of future knee replacement as contributing to his vocational disability because Dr. Hovis did not testify that his knee injury caused the future need for joint replacement.

Third, the defendant argues that the trial court should not have considered the plaintiff's hip condition or other joint problems as contributing to his vocational disability because he testified that his hip injury has caused him more difficulty at work than his left leg, and there was no medical evidence that his right hip was ever arthritic. The defendant asks this Court to reduce the plaintiff's vocational disability to reflect his minimal loss of capacity.

We find that the defendant is not entitled to relief under the second issue it raises. The trial judge properly considered all the factors in this case. The question concerning the hip is insignificant, and the award is justified without regard to the hip problem.

We affirm the judgment of the trial court. The cost of this appeal is taxed to the defendant.

John K. Byers, Senior Judge

CONCUR:

E. Riley Anderson, Chief Justice

Roger E. Thayer, Special Judge

